HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26238 of 2006

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Between:

K. Namjundappa

... Petitioner

AND

The Government of Andhra Pradesh, rep. by Chief Secretary to Government, Secretariat Buildings, Hyderabad and two others

... Respondents

:: O R D E R ::

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Counsel for the petitioner : Shri Ch.Dhanamjaya for
Shri S. Rama Moorthy Reddy

Counsel for respondents : Assistant Government Pleader for Home.

9th February, 2007

Per G.S.Singhvi, C.J.

This is a petition for quashing order dated 25-3-2006 passed by Collector and District Magistrate, Anantapur District (respondent No.2) under Section 3(2) read with Section 3(1) of the Andhra Pradesh Prevention

of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the 1986 Act').

The petitioner's son is said to have involved in four cases bearing Crime No.92 of 2005-06 dated 2-8-2005, Crime No.102 of 2005-06 dated 28-8-2005, Crime No.131 of 2005–06 dated 2
5-9-2005 and Crime No.177 of 2005-06 dated
24-11-2005 registered on the allegation that he was dealing in illicit liquor. In the first case, the detenue was found holding 100 arrack sachets in a plastic bag. In the second case, he was found holding 500 arrack sachets. In the third case, he was found holding 52 arrack sachets and in the fourth case, he was found with 200 arrack sachets. The Chemical Examiner, who analysed the samples of liquor, submitted a report with the finding that the sample is diluted arrack containing sediment, unfit for human consumption and injurious to health. After taking into consideration the facts of the four cases registered against the petitioner's son, respondent No.2 passed the impugned order. The petitioner has challenged the impugned order primarily on the ground that the same is ultra vires to the provisions of Sections 3(1) and 3(2) of the 1986 Act. The other plea taken by the petitioner is that before ordering detention of her son, respondent No.2 did not apply her mind to the record of the case and overlooked the fact that in all the cases his son had been released on bail.

Respondent No.2 has filed counter-affidavit to defend and justify the detention of the petitioner's son. In paragraph 5 of the counter affidavit, respondent No.2 has averred as under:

"I submit that in the above four cases, the Chemical Examiner, Chittoor opined that the arrack seized in the above four cases is "diluted arrack containing sediment, unfit for human consumption and injurious to health". Thus the activities of the detenu clearly fall within the definition of "Bootlegger" as defined under Section 2(b) of Act 1 of 1986, requiring me to pass the order of detention. Upon perusing the material placed before me, I am satisfied that the detenu shall be prevented from further indulging in similar offences in future and thereby the order of detention was passed on justified grounds on 25-3-2006."

It is borne out from the record that on the recommendations made by the Advisory Board, the State Government issued G.O.Rt.No.1746 General Administration (L&O. II) Department dated 29.03.2006 and confirmed the order of detention. The State Government also fixed the period of detention as 12 months.

We have heard learned counsel for the parties. Section 3 of the Act, which empowers the State Government or its delegates to pass an order of detention, reads as under:

"**3 Power to make orders detaining certain persons:-**

(1)The Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the

Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:

Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

A reading of the plain language of Section 3 (1) makes it clear that the government can pass an order of detention only if it is satisfied that the activities of bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber is in any manner prejudicial to the maintenance of public order and it is necessary to prevent him from doing so. In **E. Sumathamma v. The State of Andhra Pradesh** [1], a Full Bench of this Court considered whether every violation of the Excise Act could justify an order of preventive detention. While answering the question in negative, the Full Bench observed:

> "As there is no danger to public health or life if a person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

In **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool**[2], a Division Bench of this Court again considered the same issue. The facts of that case show that the detenu was found in possession of 200 litres of fermented jaggery wash and 10 litres of illicitly distilled liquor respectively in two cases. He was detained under Section 3 (1) of the Act. While quashing the order of detention, the Division Bench observed:

> "Everyone who answers the description of
> boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2(a) as meaning "when a
> boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:
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> > "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely

> *inter alia,* if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".
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> It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.
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> The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health, no order of detention can be issued under Section 3 of the Act."

The Division Bench concluded that unless the grounds of detention specifically advert to the fact that the percentage of fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act and that since that has not been done, they were constrained to hold that

the fundamental right of the detenu under Article 22(5) of the Constitution of India was violated.

In **K. Chinnappa Reddy v. District Collector-cum-District Magistrate**[3] also, three incidents led to registration of three cases under the Excise Act against the detenu, which were made basis for passing the order of preventive detention. The Division Bench referred to the Full Bench judgment in **Sumathamma**'s case (supra) and held that the contrary view expressed by another Division Bench in W.P. No.2180 of 1994 dated 09-3-1994 was *per incuriam*. The relevant portions of that order of the Division Bench are extracted below:

> "In the present case, first respondent, the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread danger to life or public health. The reports of the Regional Excise Laboratory also do not show that the arrack contains any harmful substance. Dealing with a similar contention in W.P. No.16671 of 1994, dated 17-10-1994 (Boya China Subbarayudu's case (4 supra)), Their Lordships held:
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> > "Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under article 22 (5) of the Constitution is violated". "

In **N. Rami Reddy v. Government of Andhra**

Pradesh[4]**,** also the detenu was involved in three cases of possession of 5 litres, 1½ litres and 1 litre of illicitly distilled liquor, which was found on chemical analysis to be illicitly distilled liquor unfit for human consumption, but was not stated to be 'harmful'. While quashing the order of detention, the Division Bench observed:

> "The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."

If the order impugned in the writ petition is examined in the light of the judicial interpretation of Section 3(1) of the Act, it is not possible to sustain the detention of the petitioner's son. No doubt, respondent No.2 has made a reference to the cases registered against the petitioner's son on the accusation that he is engaged in the trade of illicit liquor, but there is nothing on the record from which it can be inferred that the officer concerned felt satisfied that the activity of the petitioner's son was, in any manner, prejudicial to the maintenance of public order. The gravity of the consequences ensuing from the detention of a person needs no emphasis. It deprives a detenue of the basic right to life and liberty. Therefore, strict compliance of the provisions, which empower any authority to pass an order of detention, has to be insisted upon and any lapse in this regard will result in invalidation of the order of

detention.

In the result, the writ petition is allowed. The order impugned in the writ petition is declared illegal and quashed. The decision of the Government to confirm the detention of the petitioner's son is also quashed.

The detenue, who is now lodged in Central Prison, Cherlapally, Hyderabad shall be set at liberty forthwith, if his presence is not required in connection with any other case.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

9th February, 2007

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[1] 1994(1) ALT 396 (F.B.)
[2] 1995(1) ALT (Crl.) 58 (D.B.) (A.P.)
[3] 1995(1) ALT (Crl.) 454 (D.B.) (A.P.)
[4] 1997 (4) ALT 522